765 MISC

20

U.S. Supreme Ct.

Office - Supreme
FILE
MAY 20
JOHN T. FEY

IN THE

Supreme Court of The United States

OCTOBER TERM, 1956

No. 765 MISC.

JOSEPH SHEFFIELD,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA AND BRIEF IN SUPPORT THEREOF

EUGENE STANLEY,
Counsel for Petitioner,
819 Whitney Building,
New Orleans, Louisiana

SUBJECT INDEX

	Page
Petition For Leave To Proceed In Forma Pauperis	1
Affidavit In Support of Petition For Leave To Proceed In Forma Pauperis	2
Petition For Writ of Certiorari	5
Opinion Below	6
Jurisdiction	6
Summary Statement of Matters Involved	7
Specification of Errors	17
Errors of Louisiana Supreme Court Complained of	17
Complaint That Chief Counsel Appointed To Represent Petitioner Did Not Properly and Effectively Do So — Because	20
(a) He failed to urge deceased was engaged in an attempt to make an unlawful arrest at time of fatal difficulty.	26
(b) Petitioner's said chief counsel abandoned petitioner on his appeal to Louisiana Supreme Court, said chief counsel having been sentenced by U.S. District Court for the Eastern District of Louisiana to serve a prison sentence and to pay a fine of $10,000 for failure to file an income tax return.	24
The State of Louisiana Lost Right To Retry Petitioner Because of Laches On Part of Public Officials	21

NOV 3

246024

Page

Denial of Constitutional Rights Because of Incomplete Record 27

Prayer 28

Certificate of Service 29

III.

LIST OF AUTHORITIES

CASES

Page

Avery v. Alabama, 308 U.S. 444, 450 (1940) 25

DeMeerleer v. Michigan, 329 U.S. 663, 91 L. Ed. 584 (1947) 25

Gibbs v. Burke, 337 U.S. 773, 93 L. Ed. 1686 (1949) 25

Hawk v. Olson, 326 U.S. 271, 90 L. Ed. 61 (1945) 25

House v. Mayo, 324 U.S. 42, 89 L. Ed. 739 (1945) 25

In re Oliver, 333 U.S. 257, 92 L. Ed. 682 (1948) 25

Palmer v. Ashe, 342 U.S. 134, 96 L. Ed. 154 (1951) 25

Powell v. Ala., 287 U.S. 45, 77 L. Ed. 45 (1932) 25

Rice v. Olson, 324 U.S. 786, 89 L. Ed. 1307 (1945) 25

Smith v. O'Grady, 312 U.S. 329, 85 L. Ed. 859 (1941) 25

Tomkins v. Missouri, 323 U.S. 485, 89 L. Ed. 409 (1945) 25

Townsend v. Burke, 334 U.S. 736, 92 L. Ed. 1690 (1948) 25

Uveges v. Pennsylvania, 335 U.S. 437, 93 L. Ed. 127 (1948) 25

Wade v. Mayo, 334 U.S. 672, 92 L. Ed. 1647 (1948) 25

Williams v. Kaiser, 323 U.S. 471, 89 L. Ed. 398 (1945) 25

As To Incompetent Counsel See:

State of Louisiana v. Sheffield, 93 So. Rep. 2d No. 4 Advance Sheets, April 25, 1957, p. 691 5

Page

United States ex rel Hall v. Ragan, 60 F. Supp. 820 (N.D. Ill. 1945) 26

United States ex rel Foley v. Ragan, 52 F. Supp. 265 (N.D. Ill. 1943) 26

See also Annotations, 93 L. Ed. 137 (1950) 26

84 L. Ed. 383 (1940); 96 L. Ed. 161 (1952) 26

94 L. Ed. 1193 (1950); 146 A.L.R. 369 (1943) 26

84 A.L.R. 527 (1933); 38 A.L.R. 2d 1401 (1954) 26

20 A.L.R. 2d 988 (1951); 70 A.L.R. 817 (1931) 26

42 A.L.R. 1157 (1926) 26

In re: Sheffield, D.C. 126 Fed. Supp. 537, 5th Cir. 224 Fed. 2d 280 9

76 S. Ct. Rep. 217, 350 U.S. 922 in re Waller, Sheriff, v. U.S. ex rel Joseph Sheffield (Cert. denied). 10

U. S. ex rel Sheffield v. State of La., 348 U.S. 850-75 Sup. Ct. Rep. 67) 8

STATUTES

Page

Louisiana Constitution
Article 1, Sections 2, 6, and 9 ..... 7, 23, 24

Louisiana Statutes Annotated
Section 15:142, Sections 15:290 to 293 ..... 17, 23, 25

Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States 4, 6, 17, 20

USCA 1257(2) 4, 6

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. _____

JOSEPH SHEFFIELD,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner, Joseph Sheffield, who is now held in the Parish Jail for the Parish of Franklin, State of Louisiana, at Winnsboro, Louisiana, asks leave to file the attached Petition for a Writ of Certiorari to the Supreme Court of Louisiana without prepayment of costs and to proceed in forma pauperis.

The petitioner's affidavit in support of this petition is attached hereto.

EUGENE STANLEY,
Counsel for Petitioner

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1956

No. _____

JOSEPH SHEFFIELD,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

AFFIDAVIT IN SUPPORT OF PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, JOSEPH SHEFFIELD, being first duly sworn, according to law, depose and say:

That I am the petitioner in the above entitled cause, and in support of my application for leave to proceed without being required to prepay costs, state:

1. I am a citizen of the United States.

2. Because of my poverty I am unable to pay the cost of said cause.

3. I am unable to give security for the same.

4. I believe that I am entitled to the redress which I seek in said cause.

5. The nature of the said cause is briefly, as follows:

I was convicted of the crime of murder before the Fifth Judicial District Court for the Parish of Franklin, State of Louisiana, on Friday, March 23, 1956, and on May 25, 1956, after the overruling of a Motion for a new trial, I was sentenced to death.

I had previously been convicted and sentenced to death for the same crime, before the same Court, on July 3, 1953.

Subsequent to the first trial, a writ of habeas corpus was sued out in my behalf before the United States District Court for the Western District of Louisiana, under the No. 4821 - Civil-of the docket of the said Court, in which I contended that my said conviction and sentence was illegal and in violation of the Constitution and laws of the United States of America.

I was granted this writ of habeas corpus and the conviction and sentence annulled and the State of Louisiana ordered to grant me a new and fair trial within six months of the date of the finality of the said decree.

The action of Hon. Ben C. Dawkins, Jr., District Judge of the United States District Court for the Western District of Louisiana (See D.C. 126 F. Sup. 537, 5th Circ. 224 Fed. 2d, 280) was approved by the United States Circuit Court of Appeals, Fifth Circuit in case No. 15575, a certificate of

probable cause as the basis of appeal having been denied by the United States District Judge, as well as the United States Court of Appeals for the Fifth Circuit.

Subsequently, a writ of certiorari to the Supreme Court of the United States, applied for by the Respondent Sheriff was denied on December 12, 1955. (See 76 S. Ct. Rep. 217; 350 U.S. 922 - H. B. Waller, Sheriff of the Parish of Franklin, State of Louisiana vs. United States of America ex rel Joseph Sheffield).

From the present conviction and sentence in my second trial, I invoke the jurisdiction of the Supreme Court of the United States under Section 28, U.S.C. 1257, par. 3, because of the denial of rights, privileges and immunities claimed by me (1) under the Fourth, Fifth and Sixth Amendments to the Constitution of the United States, and (2) under the Fourteenth Amendment to the Constitution of the United States, all as set out in the accompanying petition for certiorari.

(Signed) Joseph Sheffield

Sworn to and subscribed before me this
15th day of May, 1957, at Winnsboro,
Parish of Franklin,
State of Louisiana

(Signed) J. R. DONNELL,
Clk. of Ct. and Ex. Off.
Notary Public

(SEAL)

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1956

No. _____

JOSEPH SHEFFIELD,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA AND BRIEF IN SUPPORT THEREOF

To The Honorable The Chief Justice and
The Honorables The Associate Justices of
The Supreme Court of the United States:

Joseph Sheffield, petitioner, prays that a Writ of Certiorari issue to review the Judgment of the Supreme Court of the State of Louisiana, in the case entitled State of Louisiana vs. Joseph Sheffield, No. 43126 of the docket of the said Court, entered on January 21, 1957.

OPINIONS BELOW

The Opinion of the Supreme Court of Louisiana, a certified copy of which is annexed hereto, has been reported in the Southern Reporter Advance Sheets, Vol. 93 So. 2d No. 4, April 25, 1957, page 691.

JURISDICTION

The Judgment of the Supreme Court of Louisiana was entered on January 21, 1957 and a rehearing denied on February 25, 1957. An extension of time within which to file in this Court a petition for a writ of certiorari was applied for on February 25, 1957 and was granted February 26, 1957.

Under the terms of this extension, petitioner was allowed ninety days (until May 27, 1957) to file his application for a writ of certiorari. Certiorari is applied for within ninety days.

The jurisdiction of this Court is invoked under Section 28 U.S.C.A. 1257 (Par. 3) because of rights, privileges and immunities claimed by petitioner (1) under the Fourth, Fifth and Sixth Amendments to the Constitution of the United States and (2) under the Fourteenth Amendment to the Constitution of the United States and also under Sections 2 and 9 of Article I of the Constitution of the State of Louisiana.

Petitioner was convicted of the crime of murder before the Fifth Judicial District Court for the Parish of Franklin,

State of Louisiana, and on May 25, 1956, was sentenced by that Court to die in the electric chair.

Numerous errors of a serious nature were committed during the course of the trial, as will be more fully set out hereafter.

SUMMARY STATEMENT OF MATTERS INVOLVED

Petitioner, Joseph Sheffield, was indicted on June 17, 1953, by the Grand Jury of the Parish of Franklin, Louisiana, for the murder of one John L. Waller. After the appointment by the Court of counsel to represent him, his trial was set for June 29, 1953, before the Fifth Judicial District Court for the Parish of Franklin, State of Louisiana. The jury returned a verdict of "Guilty as Charged" on July 3, 1953, and petitioner was sentenced to death.

No suspensive appeal was taken from the said judgment and sentence to the Supreme Court of the State of Louisiana by counsel appointed by the Court to represent petitioner.

Subsequently, a complaint having been made to the Louisiana State Bar Association that petitioner had not been properly represented and defended by the attorneys appointed by the Court to represent him, and was about to be deprived of his life without due process of law, under both Article 1, Sections 2, 6 and 9 of the Constitution of the State of Louisiana and Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, other counsel, among them a former President of the Louisiana State Bar Association, volunteered to represent petitioner.

Although the legal delays in which a suspensive appeal could be taken in the said case to the Supreme Court of the State of Louisiana had been permitted to expire by his former Court appointed counsel, new counsel who had volunteered to represent petitioner, unsuccessfully attempted, by writ of certiorari, to have the matter reviewed by the Supreme Court of the State of Louisiana.

Upon denial of this writ by the Supreme Court of Louisiana, petitioner filed in the Honorable the Supreme Court of the United States, at the October, 1954 Term, under the No. 53 Misc. a petition for writ of certiorari to the Supreme Court of the State of Louisiana, which was denied by this Honorable Court on October 14, 1954, without prejudice to the right of petitioner to petition for a writ of habeas corpus in the proper United States District Court. (348 U.S. 850, 75 Supreme Court Reporter 67).

Petitioner, through the new counsel who had volunteered to represent him, then applied for a writ of habeas corpus to the United States District Court for the Western District of Louisiana, Monroe Division, Hon. Ben C. Dawkins, Jr., Judge, to test the validity of petitioner's conviction and sentence.

After a four day hearing on the said writ, the Hon. Ben C. Dawkins, Jr., Judge of the said Court, on January 10, 1955, rendered a judgment in favor of your petitioner and against Hiram B. Waller, Sheriff of the Parish of Franklin, the respondent who held your petitioner in custody, granting your petitioner the writ of habeas corpus theretofore issued, and maintaining the same.

The said Hon. Ben C. Dawkins, Jr., District Judge, aforesaid, further ordered, adjudged and decreed that unless the State of Louisiana granted your petitioner another trial (a fair trial) within six months from the date of the said judgment (by July 10, 1955) that he, the said Hon. Ben C. Dawkins, Jr., United States District Judge, aforesaid, would then enter an order commanding the said Hiram B. Waller, Sheriff of the Parish of Franklin, State of Louisiana, respondent, to discharge and release your relator from custody. (See D.C. 126 F. Sup. 537, 5th Circ. 224, Fed. 2d 280).

The Honorable Ben C. Dawkins, Jr., United States District Judge, aforesaid, in his reasons for judgment, held that your petitioner had not received due process of law and that due process of law had been denied your petitioner at every stage of the proceeding, and further stated in said reasons, that if he were to allow your petitioner's conviction and sentence to stand, he would be compounding violation of petitioner's constitutional rights, etc. (See Reasons for Judgment of Hon. Ben C. Dawkins, Jr., United States District Judge, aforesaid, pages 673 to 689, Vol. 3 of the Transcript of the Record of the United States Court of Appeals, No. 15,575, filed with and made a part of this application.)

That the said Hiram B. Waller, Respondent, sheriff, aforesaid, (See Vol. 3, page 692 of the Transcript of the Record of the United States Court of Appeals, 5th Circuit, Case No. 15,575), gave notice of appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the said judgment.

After securing various delays within which to perfect the transcript of appeal, on April 19, 1955, the said Sheriff,

respondent, made application to the said Hon. Ben C. Dawkins, Jr., United States District Judge, aforesaid, for a certificate of probable cause, as required by U.S.C.A., Article 28, Section 2253 (See Vol. 4, Transcript of Record, United States Court of Appeals, 5th Circuit, No. 15,575, pages 1 to 69 inclusive).

Objection and resistance to the petition of said Hiram B. Waller, Sheriff, respondent, for a certificate of probable cause was made by your petitioner, through counsel (See Vol. 4, Transcript of the United States Court of Appeals, 5th Circuit, pages 70-72) and Respondent's application for such certificate was denied by the Hon. Ben C. Dawkins, Jr., United States District Judge, aforesaid (See Vol. 4, Transcript of Record of United States Court of Appeals, 5th Circuit, No. 15,575, pages 72 and 73).

Subsequently, the said Hiram B. Waller, Sheriff, respondent, made application to the Judges of the United States Circuit Court of Appeals for the Fifth Circuit (in case No. 15,575) for a certificate of probable cause, which was denied by the said Court, on the 31st day of May, 1955.

Whereupon, the said Hiram B. Waller, Sheriff, respondent, applied to this Honorable Court at the October Term, 1955, under the No. 307 Misc. for a writ of certiorari, which application was denied by this Honorable Court on December 12, 1955 (See 76 Supreme Court Reporter 217; 350 U.S. 922 - H. B. Waller, Sheriff of the Parish of Franklin, State of Louisiana vs. United States of America, ex rel Joseph Sheffield).

At no time was the Judgment in favor of your petitioner in the said habeas corpus proceeding stayed or suspended by any Court.

On January 12, 1956 (one year and two days after the rendering of the Judgment in the habeas corpus proceeding by Judge Dawkins, on January 10, 1955) and six months and two days after the expiration of the time (July 10, 1955) within which the State of Louisiana had been ordered by Judge Dawkins to retry petitioner or release him from custody, the said Hiram B. Waller, Sheriff, respondent, applied to the said District Judge for an extension of time within which to retry your petitioner.

The said Hon. Ben C. Dawkins, Jr., District Judge, aforesaid, over the objection of your petitioner, issued an order amending the original judgment in the said habeas corpus proceeding and granted the State of Louisiana an extension of ninety days, commencing January 18, 1956, within which to retry your petitioner. (See Vol. 1 of Transcript in Louisiana Supreme Court, page 59).

Proper Bill of Exceptions to the action of the said Hon. Ben C. Dawkins, Jr., District Judge, aforesaid, in so amending his said judgment was reserved on behalf of your petitioner.

On January 20, 1956, the State of Louisiana proceeded to set petitioner's case for trial for the second time.

Your petitioner, being penniless and without means to employ counsel, Mr. Warren Hunt, Attorney at Law, of Rayville, Louisiana, was appointed by the Court petitioner's

chief counsel, and Mr. Joseph S. Guerriero, Attorney at Law, of Monroe, La., was appointed associate counsel.

After due arraignment and the entry of a plea of not guilty, the case was fixed for March 19, 1956 (See La. S. Ct. Tp. Vol. 1, page 7).

Petitioner, through counsel appointed to represent him, filed a Motion for a change of venue, which was heard on March 9, 1956 and denied by the Court on March 10, 1956 (See Louisiana Supreme Court Transcript, Vol. 1, pages 8 and 9).

The testimony of the witnesses offered by petitioner, through appointed counsel, in support of this Motion for a change of venue will be found on pages 62 to 186 inclusive of Louisiana Supreme Court Transcript, Vol. 1.

Proper Bill of Exceptions was reserved to the action of the Trial Judge in denying petitioner's application for a change of venue (See Louisiana Supreme Court Transcript, Vol. 1, page 60 — Bill of Exceptions No. 1).

The Motion for a change of venue and all of the evidence heard in support thereof was made a part of the said Bill of Exceptions.

On March 17, 1956, petitioner, through appointed counsel, filed a plea to the jurisdiction and Demurrer (See Louisiana Supreme Court Transcript, Vol. 1, page 35) wherein petitioner set out a recital of the facts concerning the issuance and maintaining of petitioner's application for habeas corpus before the United States District Court for the Western Dis-

trict of Louisiana, Monroe Division, and wherein petitioner averred that under the judgment rendered in the said habeas corpus proceeding, the State of Louisiana was ordered to retry your petitioner within six months from the finality of the said decree or to release your petitioner from custody.

Petitioner averred in said plea to the jurisdiction and Demurrer that the final date within which the finality of said decree became enforceable was July 10, 1955 and that the State of Louisiana, not having retried your petitioner as directed in the said judgment, petitioner was entitled to be released from custody by the said Sheriff, respondent.

All the facts and circumstances surrounding the attempt on the part of the Sheriff, respondent in the said habeas corpus proceeding to have the judgment of Hon. Ben C. Dawkins, Jr., District Judge of the United States District Court for the Western District of Louisiana reviewed and set aside are set out in the plea to the jurisdiction and Demurrer (See Louisiana Supreme Court Transcript, Vol. 1, pages 35 to 40 inclusive).

The right of said Hon. Ben C. Dawkins, Jr. to amend his judgment of January 10, 1955, granting your petitioner a writ of habeas corpus, after the same *had become executory and final on July 10, 1955*, and to allow the State of Louisiana ninety days additional from January 12, 1956 within which to retry your petitioner was specifically challenged and objected to, (See Louisiana Supreme Court Transcript, Vol. 1, pages 39 and 40) and proper Bill of Exceptions reserved (See Louisiana Supreme Court Transcript, Vol. 1, page 11).

Attached to and made a part of the said plea to the jurisdiction and Demurrer (See page 40 of Vol. 1 of the Louisiana Supreme Court Transcript) is a duly certified copy of all of the proceedings had in the said habeas corpus proceeding No. 4821 of the docket of the United States District Court for the Western District of Louisiana, Monroe Division (No. 15,575 of the docket of the United States Circuit Court of Appeals, 5th Circ.) which is attached to and made a part of this application.

After the denial of a Motion for continuance, petitioner was placed on trial for the second time on March 19, 1956 and after a five day trial the jury returned a verdict of guilty as charged against your petitioner, and on Friday, May 25, 1956 petitioner was sentenced to death (See La. Sup. Court Trans., Vol. 1, pages 11 to 18 inclusive).

After the signing of some eleven Bills of Exception presented to the Court by counsel appointed for the petitioner, petitioner's counsel moved for a suspensive appeal on behalf of the petitioner, to the Supreme Court of Louisiana (See Louisiana Supreme Court Transcript, Vol. 1, page 18).

The Transcript in petitioner's appeal to the Supreme Court of Louisiana from his conviction and sentence was filed in that Court under the No. 43126, on July 30, 1956 and the appeal was set for hearing on December 14, 1956.

When the case came up for a hearing in the Supreme Court on December 14, 1956, Mr. Warren Hunt, petitioner's chief counsel, failed to make any appearance on behalf of petitioner.

Petitioner then learned that Mr. Hunt had been charged by Information before the United States District Court for the Eastern District of Louisiana (on February 16, 1956) under the No. 26,026 - Criminal - with failure to file an income tax return for the year 1953, in violation of Title 26, Section 145 (a) U.S.C.

Petitioner then learned that the said Warren Hunt, petitioner's chief counsel, had been arraigned before the United States District Court for the Eastern District of Louisiana, on October 24, 1956 and had pleaded guilty to the said charge and that it was adjudicated by the said Court that the said Warren Hunt be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a period of one year and fined the sum of ten thousand dollars, said fine to be paid by January 2, 1957 and the said sentence to begin on January 2, 1957.

That the said sentence was amended on January 7, 1957 so as to reduce the sentence from one year to six months, the said fine of ten thousand dollars to be paid by February 1, 1957 and said sentence to begin on February 1, 1957.

Petitioner attaches hereto and makes part hereof a certified copy of said Information as well as certified copies of the various amendments to the sentence herein-above referred to.

Petitioner has been informed and therefore alleges that Mr. Hunt, petitioner's chief counsel, is now serving the sentence imposed on him by the said Court in the above matter.

When petitioner's appeal came up for a hearing in the Supreme Court of Louisiana, Mr. Joseph Guerriero, attorney-at-law, who had been appointed associate counsel to Mr. Hunt to represent petitioner, attempted to address the Court.

Mr. Harry N. Anders, District Attorney for the Fifth Judicial District, who had prosecuted petitioner, objected to any argument being made by Mr. Guerriero for the reason that no printed brief had been filed on behalf of petitioner or served on opposing counsel fourteen days preceding the date on which the appeal was to be heard, as required by the Rules of the Louisiana Supreme Court.

Mr. Guerriero, counsel appointed by the Court to assist Mr. Hunt, then informed the Court that he had just received that morning from Mr. Hunt a few copies of a typewritten brief which he asked permission to present to the Court and also requested permission to argue the case on behalf of petitioner.

His Honor, Chief Justice Fournet of the Louisiana Supreme Court, stated that inasmuch as the appeal involved a capital case, the Court would relax the rules and permit the filing of a typewritten brief and permit Mr. Guerriero to argue the case.

Later, on January 21, 1957, the Louisiana Supreme Court affirmed the judgment and sentence of the lower Court and denied an application for a rehearing filed on behalf of your petitioner by Mr. Joseph Guerriero, associate counsel, on February 25, 1957.

Petitioner alleges that he has exhausted all legal remedies available to him under the laws of the State of Louisiana.

SPECIFICATION OF ERRORS

We respectfully contend that the Supreme Court of Louisiana erred:

I.

a. In refusing to find that petitioner's constitutional rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States of America had been violated because of the action of the trial judge in refusing to grant petitioner a change of venue, to which petitioner was entitled under Louisiana Revised Statutes R.S. 15:290 to 15:293.

b. In refusing to set aside and annul the action of the trial judge in overruling the Plea to the Jurisdiction and Demurrer filed on behalf of petitioner, wherein petitioner claimed that because of laches on the part of officials of the State of Louisiana in failing to retry your petitioner within six months from the finality of the decree of the United States District Judge granting petitioner the writ of habeas corpus, that the said State of Louisiana had lost jurisdiction to retry your petitioner.

c. That the Supreme Court of the State of Louisiana erred in refusing to set aside the action of the trial judge in over-

ruling the challenge for cause filed by petitioner to the prospective juror, Roy A. Stewart who stated on his voir dire examination that he had formed an opinion as to the guilt or innocence of the defendant, such opinion, petitioner contending, rendering it impossible for the said juror, Roy A. Stewart, to be a fair and impartial juror.

d. That the Supreme Court of Louisiana erred in refusing to set aside the action of the trial judge in denying the challenge for cause filed by petitioner to the selection of the prospective juror, Walter Huff, who on his voir dire examination had testified that he had known defendant and the deceased for about ten or twelve years, but who also stated that he had formed some opinion as to the guilt or innocence of the defendant but, that while such opinion was not of a fixed nature and would yield to evidence, that the said prospective juror was a personal friend of Sheriff Hiram Waller, brother of the deceased, etc.

e. That the Louisiana Supreme Court erred in refusing to set aside the action of the trial judge in overruling the challenge for cause filed by petitioner to the prospective juror, Jesse J. Hatton, who, on his voir dire examination, testified that he had formed an opinion as to the guilt or innocence of your petitioner, the main complaint against the selection of the said Jesse J. Hatton being that before it was known that he would be a prospective juror, he had been summoned by the State and testified on the trial of the motion for a change of venue to the effect that in his opinion, your petitioner could secure a fair and impartial trial in the Parish of Franklin.

Your petitioner alleges that the said prospective juror, Jesse J. Hatton, because of his previous testimony that your petitioner could secure a fair and impartial trial in the Parish of Franklin, had disqualified himself to serve as a juror in this case for the reason that he would be interested in vindicating his previous statement that petitioner could secure a fair and impartial trial in the Parish of Franklin, given by him when he had been interrogated on the hearing of petitioner's motion for a change of venue.

That a prospective juror who had previously been summoned by the State to testify for the State on a hearing of a motion for a change of venue and who had testified, as this prospective juror had testified, from the very nature of the circumstances surrounding the giving of such testimony, had shown himself to be an interested party, and in such a frame of mind as to make it impossible for him to listen to the testimony with a free and unbiased mind, as he had already in his own opinion, prejudged the case, and could not give petitioner a fair and impartial trial.

That petitioner was compelled to accept the said jurors, Roy A. Stewart, Walter Huff and Jesse J. Hatton, as jurors on the trial of this case, for the reason that petitioner had exhausted the number of peremptory challenges allowed him under the laws of the State of Louisiana.

II.

THAT PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA BECAUSE THE CHIEF COUNSEL APPOINTED TO REPRESENT PETITIONER, MR. WARREN HUNT, DID NOT PROPERLY AND EFFECTIVELY REPRESENT PETITIONER, FOR THE FOLLOWING REASONS:

1. That the facts in this case show that at the time of the tragic occurrence between petitioner and the deceased (see Transcript of Record, Vol. No. 3, page 684, U.S. Court of Appeals, 5th Cir. No. 15,575, containing the testimony heard on the trial of the habeas corpus proceeding before the United States District Court for the Western District of Louisiana) the deceased was attempting to make an unlawful arrest of petitioner, for a misdemeanor committed outside of his presence, without a warrant.

2. That petitioner's chief counsel, Mr. Warren Hunt, abandoned petitioner on the hearing of his case before the Louisiana Supreme Court on December 14, 1956, Mr. Hunt having been charged by Information on October 16, 1956, before the United States District Court for the Eastern District of Louisiana, New Orleans Division, with a violation of Title 26 U.S.C. 145 (a) with failing to file an income tax return for the year 1953, and pleaded guilty to the said charge on October 24, 1956 and was sentenced by the trial judge to serve one year in a correctional institution to be designated by the Attorney General of the United States of America, and fined the sum of ten thousand dollars.

That the said sentence was subsequently reduced to six months, but the fine of ten thousand dollars permitted to stand, and that the said Mr. Warren Hunt commenced to serve his said sentence on February 1, 1957, and so far as petitioner knows, is still serving the said sentence.

III.

THE STATE OF LOUISIANA, BY THE LACHES OF ITS PUBLIC OFFICIALS, LOST THE RIGHT TO RETRY PETITIONER WHEN IT PERMITTED MORE THAN SIX MONTHS TO ELAPSE FROM THE FINALITY OF THE DECREE OF JUDGE DAWKINS, U.S. DISTRICT JUDGE, GRANTING PETITIONER THE WRIT OF HABEAS CORPUS.

IV.

DENIAL OF CONSTITUTIONAL RIGHTS BECAUSE OF INCOMPLETE RECORD.

ARGUMENT

Petitioner being absolutely penniless, the cost of the present application must be borne by counsel whose name is affixed hereto, who is serving petitioner without compensation.

Being actuated by a sense of public duty toward a penniless defendant, so that this defendant can be given the benefit of every legal review to which he is entitled, counsel respectfully submits this application.

The testimony offered on the hearing of the motion for a change of venue will be found in the transcript at the

pages indicated in the statement of the case at the commencement of the brief.

Inasmuch as the entire record in the habeas corpus proceeding before Honorable Ben C. Dawkins, Jr., United States District Judge for the Western District of Louisiana, was offered in evidence on the trial of this motion for a change of venue, petitioner respectfully submits that in order to evaluate the evidence on this point the Court should consider not only the evidence offered in the lower Court, but the evidence heard before the District Court in the previous habeas corpus proceeding.

We are unable for lack of funds to analyze this testimony in detail. However, we respectfully submit that the same prejudice which originally existed as shown in Judge Dawkins' reason for judgment (see Transcript of Record U.S. Circuit Court of Appeals, Vol. 3, page 673 et seq.) also existed at the time of the motion for a change of venue.

True, considerable time had passed since the trial of the habeas corpus before Judge Dawkins and the hearing of the motion for a change of venue.

However, as is shown by the record, there is no doubt that the action of the United States District Court Judge in setting aside the conviction, and the affirmation of this judgment by the United States Circuit Court of Appeals in refusing a certificate of error, so as to permit an appeal, and the denial of certiorari by your Honors, was resented, not only by the local officials of Franklin Parish, but by many of the citizens thereof who regarded same as an unwarranted

interference by the United States Courts in a purely local matter.

Certain public officials and citizens of Franklin Parish fail to appreciate the fact that the provisions of the Constitution of the United States were enacted for the benefit and protection of all citizens, rich or poor, high or low, and that a judgment of the highest tribunal of our country should be received as the honest expression of disinterested judges conscientiously performing their official duties.

We respectfully submit that in refusing the change of venue, petitioner was denied his constitutional right to the fair and impartial trial to which he was entitled by the laws of the State of Louisiana (Section 15:142 and 15:143, Louisiana Revised Statutes and Article 1, Section 9, Louisiana Constitution) as well as by the Constitution of the United States.

We believe that the State of Louisiana, by the laches of its public officials, lost the right to retry petitioner because it permitted more than six months to elapse from the finality of the decree of Judge Dawkins granting the writ of habeas corpus to petitioner on January 10, 1955.

The six months from January 10, 1955 within which the State was ordered to retry petitioner, expired on July 10, 1955, and at no time did the State of Louisiana secure any order from any Court staying the effectiveness of Judge Dawkins' Judgment of January 10, 1955.

That the State of Louisiana itself entertained serious doubt of its right to retry petitioner more than six months after the date of Judge Dawkins' Judgment granting petitioner the writ of habeas corpus on January 10, 1955 (see Judge Dawkins' Judgment in Transcript of Record, United States Court of Appeals, 5th Circuit, No. 15,575, Vol. 3, page 690) is shown by the fact that on January 12, 1956 the State filed a motion in the District Court of the United States for the Western District of Louisiana, Monroe Division, in the said habeas corpus proceeding No. 4821 - Civil - asking that said Judgment be amended and extended so the State could retry petitioner.

The Court then amended its original Judgment so as to allow the State of Louisiana ninety days additional within which to retry petitioner.

Objection was timely made by counsel representing petitioner to the action of Judge Dawkins in granting this extension. (see Transcript of the Louisiana Supreme Court No. 43126, Vol. 1, page 58 b and c).

THE LACK OF PROPER REPRESENTATION OF PETITIONER BY THE CHIEF COUNSEL APPOINTED TO REPRESENT PETITIONER, MR. WARREN HUNT, AND THE ABANDONMENT OF PETITIONER BY MR. HUNT IN THE SUPREME COURT OF LOUISIANA, WHEN PETITIONER'S APPEAL WAS HEARD.

Under the Constitution of the State of Louisiana, Article 1, Section 9, it is provided that in all criminal prosecutions the accused has the right to have the assistance of counsel.

This provision is also contained in Section 15:142 of the Louisiana Revised Statutes.

The deprivation of the right of counsel and the right to the effective assistance of counsel constitutes a denial of due process of law under the Fourteenth Amendment to the Constitution of the United States of America.

In Powell v. Alabama, 287 U.S. 45, 77 L. Ed. 45, (1932) the Supreme Court of the United States decided that *"in a capital case, where the defendant is unable to employ counsel and is incapable adequately of making his own defense because of ignorance, feeblemindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary prerequisite of due process of law."*

Palmer v. Ashe, 432 U.S. 134, 96 L. Ed. 154 (1951); *Gibbs v. Burke*, 337 U.S. 773, 93 L. Ed. 1686 (1949); *Uveges v. Pennsylvania*, 335 U.S. 437, 93 L. Ed. 127 (1948); *Townsend v. Burke*, 334 U.S. 736, 92 L. Ed. 1690 (1948); *Wade v. Mayo*, 334 U.S. 672, 92 L. Ed. 1647 (1948). *In re Oliver*, 333 U.S. 257, 92 L. Ed. 682 (1948); *DeMeerleer v. Michigan*, 329 U.S. 663, 91 L. Ed. 584 (1947); *Hawk v. Olson*, 326 U.S. 271, 90 L. Ed. 61 (1945); *Rice v. Olson*, 324 U.S. 786, 89 L. Ed. 1307 (1945); *House v. Mayo*, 324 U.S. 42, 89 L. Ed. 739 (1945); *Tomkins v. Missouri*, 323 U.S. 485, 89 L. Ed. 409 (1945); *Williams v. Kaiser*, 323 U.S. 471, 89 L. Ed. 398 (1945); *Smith v. O'Grady*, 312 U.S. 329, 85 L. Ed. 859 (1941).

The Fourteenth Amendment requires more than the mere act of appointment.

It requires that appointed counsel render substantial aid and effective assistance to petitioner and it was the duty of this appointed counsel to make this representation effective before trial, during the trial and throughout the appeal.

In the case of *Avery v. Alabama*, 308 U.S. 444,450 (1940) the Court pointed out that not only did appointed counsel represent defendant in the trial court but in conjunction with other counsel, later employed, they carried an appeal to the State Supreme Court and then brought the matter to the United States Court for review.

As to incompetent counsel see *U.S. ex rel Hall v. Ragen*, 60 Fed. Supp. 820 (N.D. Ill. 1945) and *U.S. ex rel Foley v. Ragan*, 52 Fed. Supp. 265 (N.D. Ill. 1943 — see also *Annotations*, 93 L. Ed. 137 (1950); 84 L. Ed. 383; 96 L. Ed. 161; 94 L. Ed. 1193 - 146 ALR 369; 84 ALR 527; 38 ALR 2d 1401; 20 ALR 2d 988; 70 ALR 817; 42 ALR 1157.

Mr. Hunt, the chief counsel appointed to represent petitioner, not only neglected to show on the trial of petitioner in the lower Court that the deceased, at the time of the tragic happening, was violating the Louisiana law in making an unlawful arrest without a warrant for an alleged misdemeanor committed outside of his presence, but practically abandoned petitioner on his appeal before the Louisiana Supreme Court.

Had the fact that the deceased, at the time of the tragic happening, was engaged in making an unlawful arrest for a misdemeanor committed outside of his presence been brought out by Mr. Hunt on the trial of petitioner, it could

have had the effect of reducing the crime from that of murder to manslaughter under the Louisiana law.

The record will show that the typewritten brief belatedly prepared and sent by Mr. Hunt on behalf of petitioner to the Supreme Court of Louisiana the day the case was fixed for argument was totally inadequate.

Petitioner was entitled to the personal presence of Mr. Hunt, his chief counsel, in arguing this appeal before the Louisiana Supreme Court, which he was denied because of Mr. Hunt's absence.

We mention these facts not in a spirit of condemnation of Mr. Hunt, because Mr. Hunt, faced with a federal sentence of one year in a federal correctional institution and a fine of ten thousand dollars imposed by the United States District Court, Eastern District of Louisiana, for failure to file his 1953 income tax return, was certainly in no mental condition to properly handle petitioner's appeal and for this reason alone, petitioner was denied proper representation by counsel appointed by the Court to represent him.

Petitioner further alleges that he was denied due process of law guaranteed him under the Fourteenth Amendment to the United States Constitution because the record shows that the record is incomplete, because there was excluded therefrom the testimony of four witnesses called on the hearing of the motion for a change of venue (see Petitioner's Motion For New Trial, La. Transcript Vol. 1, No.

43126, pages 52 and 53 and see Bill of Exceptions No. 11, La. Supreme Court, Transcript No. 2, page 507).

The record shows that the testimony of these four witnesses, to wit: N. G. Lee, John T. O'Bryan, Roy McIntyre and Robert Garner, is missing from the record because of failure of the mechanical recording device to properly record the same, or because it was accidently or inadvertently obliterated from the machine's records.

Despite the per curiam of the learned trial judge to this Bill of Exceptions No. 11 (La. S. Ct. Transcript, Vol. 2, pages 507 and 508) as to his appreciation of the testimony of these witnesses, we respectfully submit that it was the duty of counsel appointed by the Court to represent petitioner to have this record properly supplemented before this transcript was completed and filed in the Supreme Court, and it was equally the duty of the trial judge to see that this was done.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Louisiana, commanding that Court to certify and send up to this Court, on a date to be designated, a full and complete transcript of the record and of all proceedings in the Fifth Judicial District Court for the Parish of Franklin, State of Louisiana, in the case No. 43,126 of the docket of the Supreme Court of the State of Louisiana, entitled "State of Louisiana, Appellee, vs. Joseph Sheffield, Appellant" to the end that this case may be reviewed and determined by this Court.

Petitioner prays that he be granted such other and further relief as may appear proper.

EUGENE STANLEY
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify under Rule 33(3-b) that service has been made on the State of Louisiana, respondent, of this petition for certiorari, by serving a copy hereof by mailing same to Hon. Jack P. F. Gremillion, Attorney General of the State of Louisiana, addressed to him at his office in the State Capitol, Baton Rouge, La. and deposited first class postage prepaid in the main office of the United States Post Office in the City of New Orleans, La.

New Orleans, La., May 1957.

EUGENE STANLEY
Attorney for
Joseph Sheffield,
Petitioner

(All papers and process in connection with this proceeding may be served upon Eugene Stanley, Attorney, at or by addressing same to his law office at 819 Whitney Bank Building, New Orleans, La.)

FILED
MAY 29 19
JOHN T. FEY, C

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 765 MISC.

JOSEPH SHEFFIELD
Petitioner,

versus

STATE OF LOUISIANA
Respondent

OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA AND BRIEF IN SUPPORT THEREOF.

JACK P. F. GREMILLION
Attorney General
State of Louisiana

M. E. CULLIGAN
Special Assistant Attorney General
State of Louisiana

HARRY N. ANDERS
District Attorney
Fifth Judicial District

In the
Supreme Court of the United States

OCTOBER TERM, 1956

No. _____

JOSEPH SHEFFIELD,
Petitioner,

versus

STATE OF LOUISIANA
Respondent

OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Honorables the Associate Justices of the Supreme Court of the United States

The State of Louisiana herein appearing through Jack P. F. Gremillion, Attorney General, M. E. Culligan, Assistant Attorney General, and Harry N. Anders, District Attorney, Fifth Judicial District of the State of Louisiana, with respect shows:

While petitioner has been duly sentenced to death and a stay order granted by the Supreme Court of Louisiana expires on May 27, 1957, no application has

been made to the Governor of the State of Louisiana for the issuance by him of a death warrant and no such application will be made until final determination by your Honors of petitioner's application. We desire this court to understand and be informed that while time is of the essence by reason of the fact that the Louisiana Supreme Court's stay order expires May 27, 1957, there is no necessity, in our opinion, for your Honors to grant any stay order, if any, until after your Honors have decided whether or not the petition of applicant and this opposition of the State of Louisiana having been duly considered.

The facts as stated in petitioner's petition pages 5 through 16 inclusive are correct except that we respectfully direct your Honors' attention that where reference is made on pages 11, 14 and 15 that Attorney Warren Hunt was appointed as petitioner's chief counsel and that Mr. Joseph S. Cuerriero, Attorney, was appointed as associate counsel, is not correct, as both of these highly learned, esteemed and experienced practitioners of criminal law, each of whom has had better than twenty (20) years of active experience in the trial of criminal cases both in the Louisiana District Courts, Louisiana Supreme Court and various Federal Courts, were appointed jointly as co-counsel to represent the defendant. As a matter of fact Mr. Warren Hunt is from Rayville, Louisiana, which is a

town within the jurisdiction of the Fifth Judicial District Court; Mr. Guerriero being a practitioner from Monroe, Louisiana, which is within the territorial jurisdiction of the Fourth Judicial District Court, Mr. Guerriero having voluntarily agreed to accept an appointment in this matter.

In addition, as is shown in the record itself all pleadings were filed jointly by Mr. Hunt and Mr. Guerriero, both of whom participated actively and energetically in the trial before the District Court and also filed their pleadings before the Louisiana Supreme Court including the application for rehearing and in addition Mr. Guerriero appears as counsel in the petition for the stay of execution as one of counsel of record, the said application being signed also by Attorneys Eugene Stanley and Leon Picou, Jr., however, in this petition for writ of certiorari to the Louisiana Supreme Court the only attorney now appearing before this court is Eugene Stanley of New Orleans, Louisiana, who is acting in this particular case as a private counsel and does not in any way represent the Louisiana State Bar Association herein. (This statement is made to clarify any possibility that your Honors might inadvertently infer from statement in the petition on page 7 thereof that the Louisiana Bar Association is now participating in this proceeding. In the trial or habeas corpus proceeding, none

of the attorneys, namely, Eugene Stanley, Leon Picou, Jr., or Charles I. Collins, represented the Louisiana State Bar Association, but on the contrary Mr. Leon Picou, Jr., was employed to represent petitioner, the other gentlemen joining with Mr. Picou in the trial of that proceeding).

We also invite your Honors' attention to the fact that while Mr. Hunt did not appear and argue the case before the Louisiana Supreme Court, Mr. Hunt had prepared and presented a typewritten brief which, however, had not been filed within fourteen (14) days prior to argument in accordance with the rules of that court. But despite that fact brief was permitted to be filed and Mr. Guerriero was permitted and did argue the entire case. As your Honors' know, it is not unusual that in cases before all Appellate Courts where there are co-counsel even before your august body, one of the counsel may not appear and the other counsel proceeds to present argument or is present in person and does not present argument or, sometimes the counsel divides the time allotted for argument between them in accordance with the rules of court, it being universally accepted by all Appellate Courts, both of the States and of the United States that the presentation of argument and division of time is a matter within the sound discretion of the various counsel in the case, limited by the rules of court as

to the number of counsel that may present argument. In similar fashion had Mr. Hunt appeared and not Mr. Guerriero, the same, in our opinion, frivolous objections and contentions could still have been made by the present counsel for petitioner. There is nothing in the record to even remotely indicate that Mr. Hunt abandoned petitioner but on the very contrary, as your Honors will note, Mr. Hunt and Mr. Guerriero filed the application for rehearing after the decision had been handed down by the Louisiana Supreme Court.

In opposition to the specification of errors which commences on page 17 of the petition, Paragraph I(a) is simply a conclusion of the pleader. The opinion of the Louisiana Supreme Court directly refutes such conclusion.

Paragraph I(b) is again merely a conclusion of the pleader which he again reiterates under paragraph III.

Paragraph I(c) states that the Supreme Court of Louisiana erred in refusing to set aside the action of the trial judge overruling a challenge for cause filed by petitioner to prospective juror, Roy A. Stewart, it being alleged the answers of Mr. Stewart made impossible for Mr. Stewart to be a fair and impartial juror. We specifically direct your Honors' attention to the fact that Roy A. Stewart was pre-emptorily

challenged by defense counsel **and did not serve as a member of the jury which tried petitioner.** This is borne out by the minutes of the court and the bill of exception taken by defense counsel shows that they did pre-emptorily challenge Mr. Stewart.

Paragraph I(d) states the Supreme Court of Louisiana erred in denying a challenge for cause to a prospective juror, Walter Huff. Again we desire to direct your Honors' attention that Mr. Walter Huff in similar fashion to Mr. Stewart **did not serve as a member of the jury which tried petitioner.** Mr. Huff also was pre-emptorily challenged by defense counsel as is reflected by the minutes of the court and by the bill of exception reserved by defense counsel.

Paragraph I(e). Again petitioner states that the Louisiana Supreme Court erred in refusing to set aside a challenge for cause against a prospective juryman, Jesse J. Hatton. Again we direct your Honors' attention to the fact that as in the cases of Mr. Stewart and Mr. Huff, Mr. Hatton also **did not serve as a member of the trial jury.** Mr. Hatton was pre-emptorily challenged by defense counsel as is reflected by the minutes and the bill of exception reserved by defense counsel.

In support of the above, for your Honors' quick reference, there is listed below the names of the twelve (12) jurymen and the alternate juryman who were

finally selected and before whom trial of petitioner was had:

Eugene Sturdivant
Joe Thornhill
Marvin W. Hammett
John Gray
Harold H. Sims
Burwin Curry
George D. Cupit
Elton Bryan
Norman Wells
J. D. Killian
Abe Solomon
J. A. McGraw
Kenneth Mason (Alternate)

We therefore respectfully request that the last paragraph on page 19 of petitioner's petition be order stricken from the petition as the said paragraph does not reflect clearly the situation as borne out by the record and unquestionably is an error by petitioner's counsel as the true facts are directly contrary thereto.

Insofar as Paragraph II of petition is concerned, in paragraph 1 thereof it is alleged that the testimony on the trial of habeas corpus proceeding shows the deceased was attempting to make an unlawful arrest of petitioner for a misdemeanor committed outside of his presence without a warrant. We respect-

fully disagree that any such conclusion can be drawn from the testimony referred to. There is nothing contained in the record of the trial of this case before the Louisiana District Court to indicate that the deceased was making any attempt to make an arrest lawful or otherwise, as he was shot before he had any such opportunity as is shown by the written confession of the defendant which is in the record.

As to the second paragraph of Paragraph II that Mr. Warren Hunt, one of the co-counsel in this case, abandoned petitioner on the hearing of his case before the Louisiana Supreme Court, there is nothing in the record of the Louisiana Supreme Court showing any such abandonment, but on the contrary, as stated supra, Mr. Hunt prepared brief, duly filed the same, co-counsel Guerriero argued the case and Mr. Hunt and Mr. Guerriero filed timely application for rehearing. The fact that Mr. Hunt became involved for failing to file an income tax return and plead guilty in the United States District Court to such violation is certainly irrelevant and immaterial as nowhere in the petittion has there been shown that Mr. Hunt and Mr. Guerriero did not do their full duty to petitioner during the entire trial of this case both before the District Court and the Louisiana Supreme Court nor has any charge been made in the petition of any in-

efficiency or laxity by either of these two gentlemen.

Paragraph III of the petition alleges that the State of Louisiana lost the right to retry petitioner when it permitted more than six (6) months to elapse from the date of the decree of Judge Dawkins, United States District Court Judge, in granting petitioner the writ of habeas corpus. In answer to this paragraph we quote from the decisions of the Louisiana Supreme Court:

> "The State contends that the said judgment was not final until such time as it had exhausted its recourse to the appellate Federal courts, and that the finality of the said judgment or the writ of habeas corpus became final on December 12, 1955, the date on which the Supreme Court of the United States denied the State of Louisiana leave to file a petition for writ of certiorari in that Court; that notwithstanding this fact, the State, in an abundance of caution applied to the Federal court for an extension of time in which to try the said defendant, which time was extended for 90 days, commencing January 18, 1956.
>
> To support the contention that Judge Ben C. Dawkins, Jr., had no authority to grant said extension of time, defendant cites the provision of 28 U.S.C.A., Section 2243, which section of the United States Code specifically refers to the issuance of the writ of habeas corpus and provides:
>
> 'The court shall summarily hear and determine

the facts, and dispose of the matter as law and justice require.'

We find no law, and the defendant has failed to cite any law or jurisprudence to sustain his position that this Codal Article of the United States Code prohibits the order granting the extension of time herein complained of. It is our opinion that by virtue of the power granted by said Article, the United States District Court for the Western District of Louisiana had a right to dispose of the matter presented in the habeas corpus proceeding by fixing a time limit within which the accused must be retried or discharged, and, further, to amend said order extending said time limit, as within his discretion law and justice require. In compliance with said order, the defendant herein was brought to trial on March 19, 1956, within the time limit, as extended."

We have also attached hereto, marked Appendix I, a letter from Eugene Stanley, Attorney for petitioner, in the habeas corpus proceeding and now the attorney for petitioner before your Honors, dated December 21, 1955, addressed to Honorable Harry N. Anders, District Attorney, which is self-explanatory, and from which your Honors will note copy of this letter was sent to Honorable Ben C. Dawkins, Jr., Judge, in which Mr. Stanley at that time in interpreting Judge Dawkins' order felt "that the six (6) months mentioned in the judgment of the lower court only commences to run from December 12, 1955 which

allows you until June 12, 1956", and this case was actually tried in the month of March 1956.

In Paragraph IV of the petition counsel states that, and we quote:

> "Being actuated by a sense of public duty toward a penniless defendant, so that this defendant can be given the benefit of every legal review to which he is entitled, counsel respectfully submits this application."

It is to be noted that Mr. Stanley first appeared in this case in the habeas corpus preceeding in December, 1954 and did not take any action in the Federal Court against Judge Dawkins extending the time for hearing nor did he volunteer his services in the second trial in the District Court nor volunteer his services when appeal was taken to the Louisiana Supreme Court.

ARGUMENT

It is respectfully submitted that the unanimous opinion rendered by the Louisiana Supreme Court is correct on every essential point which was raised by the defendant. The bill of exception No. 1, which was reserved to the overruling of a motion for a change of venue, as is shown by the opinion rendered by Associate Justice Simon, shows that there was no evidence or bias, prejudice or inflamed passion such as would violate any of the constitutional and inviolate rights of the accused. As is pointed out in the opinion almost

2½ years had elapsed between the time of the crime charged and that of the trial. The Louisiana Supreme Court very carefully weighed the bills of exception 2, 3 and 4 which were reserved to the ruling of the trial judge refusing to sustain challenges for cause of the prospective jurymen, namely; Roy A. Stewart, Walter Huff and Jesse J. Hatton and shows that the ruling of the trial court was correct in overruling the challenges for cause even if these gentlemen had actually served as jurymen on the trial and which, as we have shown above, did not occur, as all three of these gentlemen had been pre-emptorily challenged and did not serve.

Bill of exception No. 5 was also carefully scrutinized by the Louisiana Supreme Court which bill was reserved to the overruling of the plea to the jurisdiction of the Fifth Judicial District Court based on the contention that Federal Judge Dawkins was without authority to amend his original judgment. As is stated by the Supreme Court of Louisiana in its decision they could find no law nor did the defendant cite any law to them nor has defendant in this petition cited any showing that Judge Dawkins had no such authority and in addition counsel made no complaint to any Federal Appellate Court that Judge Dawkins was without such authority. The Louisiana Supreme Court also carefully considered Bills of Exception 6, 7, 8, 9, 10 and 11 on

which rulings no complaint has been made in the instant petition.

We also call your Honors' attention to the fact that in the application for rehearing filed in the Louisiana Supreme Court by counsel of record, Mr. Warren Hunt and Mr. Joseph S. Guerriero, admit the Louisiana Supreme Court's opinion was right on all of the bills of exception, excepting Bills No. 1 and 5, which have hereinabove been discussed.

We, therefore, believe that petitioner's petition is without merit and the relief sought should be denied.

Respectfully submitted,

JACK P. F. GREMILLION
Attorney General
State of Louisiana

M. E. CULLIGAN
Special Assistant Attorney General
State of Louisiana

HARRY N. ANDERS
District Attorney
Fifth Judicial District

APPENDIX NO. 1

EUGENE STANLEY
Attorney at Law
Whitney Building
New Orleans

December 21, 1955

Hon. Harry N. Anders
District Attorney
Fifth Judicial District
Winnsboro, Louisiana

Dear Mr. Anders:

I beg to acknowledge yours of December 19, enclosing original and copy of application to the District Judge by defendant and appellant, to amend and extend original judgment in the matter of United States ex rel, Joseph Sheffield vs. Hiram Waller, Sheriff, No. 4821, U. S. District Court, Western District of Louisiana, Monroe Division.

Since talking to you the other day and giving the matter some additional thought, as I informed you over the telephone, it was my appreciation of the Judgment that the term "within six months from the finally effective date of the decree to be entered herein" meant six months from the date of the final judgment by the Court of last resort.

In other words, since the United States Supreme Court on December 12, 1955, denied the motion for

leave to file petition for writ of certiorari, I was and am of the opinion that the six months mentioned in the judgment of the lower court only commences to run from December 12, 1955, which allows you until June 12, 1956 to commence a new prosecution.

After careful and conscientious consideration of the matter, I have concluded that I cannot sign the certificate set out on the second page of your application, for should I be in error as to when the six month period actually commenced, my signing might be considered as a waiver of a legal right which otherwise would be available to Sheffield on his second trial.

I am returning you the original of your application (unsigned) and I have retained the carbon copy which you sent to me.

I am taking the liberty of sending a copy of this letter to Hon. Ben C. Dawkins, Jr., United States District Judge.

I remain, with kindest personal regards,

Very truly yours,

(Original Signed) Eugene Stanley

ES:md

cc. Hon. Ben C. Dawkins, Jr.

CERTIFICATE

PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

Before me, the undersigned authority, personally came and appeared, M. E. Culligan, who, being by me first duly sworn, deposes and says:

That he is one of the attorneys of record in the above entitled action; that all of the allegations made are true and correct, and that he has served a copy of same by mailing it to attorney of the petitioner, Mr. Eugene Stanley, to his office in the Whitney Building, City of New Orleans, Louisiana, by regular United States mail, postage prepaid, on this date.

M. E. CULLIGAN

Sworn to and subscribed before me on this 24th day of May, 1956.

ESTHER A. KELLY,
Notary Public

Members of the United States Supreme Court Bar:

Jack P. F. Gremillion,
Attorney General
Capitol Building
Baton Rouge, Louisiana

M. E. Culligan,
Special Assistant Attorney General
403 Civil Courts Building
New Orleans, Louisiana